

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

JOHN SPAULDING,

Petitioner,

vs.

JAMES SALMONSON,

Respondent.

Cause No. CV 18-61-GF-BMM-JTJ

ORDER

This case comes before the Court on Petitioner John Spaulding's application for writ of habeas corpus under 28 U.S.C. § 2254. Spaulding is a state prisoner proceeding pro se.

On April 2, 2018, Spaulding joined a group of prisoners in filing an "en masse" habeas petition. This Court subsequently issued an order to Petitioner directing him to advise the Court if he did wish to proceed in this habeas matter and, if so, requiring Petitioner to complete and file this Court's standard § 2254 habeas form. (Doc. 1).

Spaulding timely responded and advised the Court that he wished to be severed from the en masse group and to be allowed to withdraw the pending petition so that he may exhaust his state remedies. (Doc. 5 at 1-2). Spaulding further advised the Court that he would seek to refile his petition at a later date.

*Id.* at 2. Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides Spaulding with an avenue for voluntary dismissal.

Accordingly, IT IS HEREBY ORDERED:

1. Spaulding's Motion to Sever and Withdraw (Doc. 5) is **GRANTED**.

This matter is **DISMISSED** without prejudice pursuant to Fed. R. Civ. P.

41(a)(1)(B). Spaulding may return to this Court if and when he has exhausted his state remedies.

2. Spaulding's Motion for Leave to Proceed in Forma Pauperis (Doc. 3) is **DENIED** as moot.

DATED this 24<sup>th</sup> day of April, 2018.

/s/ John Johnston

John Johnston

United States Magistrate Judge